

The issues for determination by the Appeals Board are the same as those considered by the Administrative Law Judge, to wit:

- (1) Whether or not the claimant sustained personal injury by accident on September 10, 1991.
- (2) Whether or not the claimant's alleged personal injury by accident on September 10, 1991 arose out of and in the course of her employment with the respondent.
- (3) What was the claimant's average weekly wage?
- (4) Whether or not the claimant is entitled to any future medical treatment at the expense of the respondent-insurance carrier and/or Kansas Workers Compensation Fund.
- (5) Whether or not the claimant is entitled to be paid the sum of not more than \$350 by the respondent-insurance carrier and/or Kansas Workers Compensation Fund as an unauthorized medical allowance.
- (6) The extent of permanent partial disability to the claimant's left leg sustained by her on September 10, 1991.
- (7) What, if any, is the compensation due the claimant as the result of her alleged personal injury by accident on September 10, 1991?
- (8) Whether or not the Kansas Workers Compensation Fund would be liable for the claimant's alleged personal injury by accident on September 10, 1991, or the resulting disability, if any, and if so found liable, to what extent the Kansas Workers Compensation Fund would be so liable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds the findings of fact and conclusions of law, as enumerated in the Award of the Administrative Law Judge, to be accurate and the Appeals Board adopts same as its own findings of fact and conclusions of law as if specifically set forth herein as to each issue. It should be noted with regard to Finding No. 3 by the Administrative Law Judge, concerning claimant's average weekly wage, that the applicability of K.S.A. 44-511(b)(7) to this factual situation was not made an issue by the parties.

Respondent conceded in its brief that, "Since there is no dispute that the Claimant was engaged in part time work at both of her employer (sic), namely U.S.D. 500 and Respondent's, then K.S.A. 44-511(b)(7) applies." Accordingly, the Appeals Board was not asked to decide whether claimant was performing the same or a very similar type of work on a part-time basis for both of her employers. Furthermore, in affirming this Award, the Appeals Board is not deciding the issue of whether K.S.A. 44-511(b)(7) applies to a situation where a claimant performed the same or a very similar type of work on a part-time basis for each of two or more employers, but where the injury was sustained by an accident arising out of and in the course of only a single employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer, dated August 2, 1994, should be, and hereby is, affirmed in all respects. The orders contained in the Award are adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of March 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert W. Harris, Kansas City KS
Steven C. Alberg, Overland Park KS
Terri Z. Austenfeld, Mission, KS
Alvin E. Witwer, Administrative Law Judge
George Gomez, Director